United Nations CCPR/C/122/D/2175/2012

International Covenant on Civil and Political Rights

Distr.: General
29 August 2018

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2175/2012*, **

Communication submitted by:	Adelaida Kim (not represented by counsel)
Alleged victim:	The author
State party:	Uzbekistan
Date of communication:	5 October 2009 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 17 July 2012 (not issued in document form)
Date of adoption of Views:	4 April 2018
Subject matter:	Arrest, conviction and fine imposed for participation in unauthorized peaceful gatherings
Procedural issues:	Exhaustion of domestic remedies; substantiation; abuse of the right to submission
Substantive issues:	Freedom of expression and assembly; fair trial; arbitrary detention
Articles of the Covenant:	2 (1)–(3), 9 (1), 12, 14 (1), 18, 19 and 21
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The author of the communication is Adelaida Kim, a national of Uzbekistan born in 1951. She claims that the State party has violated her rights under articles 2 (1)–(3), 9 (1), 12, 14 (1), 18, 19 and 21 of the Covenant. The Optional Protocol entered into force for Uzbekistan on 28 December 1995. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 6 December 2008, the author and 10 other people held a peaceful protest against arbitrariness in the work of the law enforcement authorities in Tashkent. The protest was

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Ivana Jelić, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

GE.18-14208(E)

1814208

Please recycle

held in front of the Investigation Department of the Prosecutor General's Office. After the protest, all the participants dispersed quietly and voluntarily.

2.2 Later that day, all the participants, including the author, were arrested by police in different locations for "disobeying or resisting [the] lawful orders of [a] police officer", "violating public order" and participating in a public event that was not authorized by the authorities. The police officers drew up administrative offence records and reports, in Uzbek, with respect to the author and the other participants, despite the fact that none of the participants were proficient in that language. All the participants were arrested and taken to the police department of Mirzo-Ulugbek district, where they were charged under articles 194 (1), 195 and 201 (1) of the Administrative Responsibility Code.[1]

2.3 The author requested the prosecutor of Mirzo-Ulugbek district to bring criminal proceedings against the police officers who had arrested her. She claimed that they had abused their office, forcefully taken her to the police department, falsified the written evidence, and later lied in court that they had requested the participants to stop the picket and that the participants had been carrying banners containing provocative content and had tried to escape while resisting their orders and cursing.

2.4 On 6 December 2008, the Mirzo-Ulugbek District Court found the author guilty under articles 201 (1), 194 (1) and 195 of the Administrative Responsibility Code and fined her 10 monthly wages.[2] On 22 December 2008, the author appealed the decision to the President of the District Court, who rejected her appeal on 11 February 2009. The author claims that the court heard her case several times before rejecting her appeal. Although she had been notified of those hearings, she was not admitted to the courtroom until 6 February 2009, as a witness in the case of two other participants. On 18 February, she filed a cassation appeal with the Tashkent City Court, which rejected it on 26 February 2009. Despite the fact that the author had requested to attend the hearing, she was not notified thereof and it was held in her absence. On 14 March 2009, the City Court rejected the author's application for a supervisory review, again in her absence and without notification. With reference to articles 320 and 321 of the Administrative Responsibility Code, the court considered that the author's participation in the cassation and supervisory review hearings was not necessary. On 3 April 2009, the author filed another application for a supervisory review with the Supreme Court, which rejected it on 4 August 2009. The author also submits that she filed various complaints to the prosecutor's office, the Presidential Administration, the parliament and the Constitutional Court, with no apparent results. She also unsuccessfully challenged the judges of the appellate courts and courts of cassation before the competent authorities.

2.5 The author challenges the charges against her and claims that articles 194 (1), 195 and 201 (1) of the Administrative Responsibility Code are inapplicable to her case. With reference to a commentary to the Code, she explains that article 201 (1) sanctions only

[1] Unofficial translation:

Article 201 (1)

Violation of the procedure for organizing and holding assemblies, rallies, marches or demonstrations is punishable by a fine of between 60 and 80 times the minimum wage or by administrative detention of up to 15 days.

Article 194 (1)

Non-compliance with the lawful orders of a police officer to: stop breaking the law; to provide identity documents; to follow him or her to or to appear at a police department when requested without due justification; to stop a vehicle; or to provide aid to victims, as well as non-compliance with the lawful orders of other persons responsible for the protection of public order and the rights and freedoms of citizens, is punishable by a fine of between half and twice the minimum wage.

Article 195

Public calls in any form not to comply with the lawful orders of a police officer in connection with the performance of his or her official duties, as well as the dissemination of defamatory information with a view to provoking mass disobedience of the orders of police officers, is punishable by a fine of between 3 and 5 times the minimum wage or by administrative detention of up to 15 days.

[2] The equivalent of $150.

violations of the procedure for organizing and conducting assemblies, rallies, marches and demonstrations. First, she did not organize the event and the courts did not establish who the organizer was. Second, there is no procedure for organizing mass events or pickets under domestic law. According to the commentary, violations of the procedure can include failing to comply with the aims, form and location of an assembly; violating public order; carrying weapons; and failing to comply with lawful orders to stop an assembly. She submits that the protest did not violate public order, that it was peaceful and did not cause any problems to transport and pedestrian traffic, and that the participants did not carry any weapons and were not asked to stop the event. She further argues that articles 194 (1) and 195 of the Code are applicable to situations involving non-compliance with the orders of police officers and public calls or the dissemination of information aiming to provoke public disobedience of such orders. She submits that she never resisted arrest, that she obeyed all the orders of the police officers during arrest and did not call on others to disobey such orders, that she was not asked to stop protesting or to show her identity documents, and that the protest was terminated peacefully at the initiative of the participants.

2.6 The author submits that she has exhausted all available and effective domestic remedies.

2.7 On 6 October 2011, the author requested that the State party reimburse the expenses that she had incurred as well as non-pecuniary losses, as provided for under domestic law.

The complaint

3.1 The author alleges that her arrest was arbitrary and violated her rights under article 9 (1) of the Covenant. She submits that the protest was peaceful in nature and that at no point was she asked to stop picketing. Therefore, her arrest was not in accordance with the law and was not justified. According to articles 285–287 of the Administrative Responsibility Code, administrative arrest is permitted with a view to preventing a crime and if the person concerned cannot be identified at the moment of arrest. She submits that the police had no legal grounds to arrest participants carrying identity documents and marching peacefully or to bring them to the police department. Furthermore, her arrest was not recorded.

3.2 The author also submits that, by wrongfully finding her guilty under articles 194 (1), 195 and 201 (1) of the Administrative Responsibility Code and by fining her, the State party violated her rights under articles 19 and 21 of the Covenant. She also argues that she was found guilty based on a commentary rather than law. She adds that the commentary contradicts articles 29 and 33 of the Constitution and international standards insofar as it requires the obtaining of written authorization prior to holding an assembly.

3.3 The author further claims a violation of her right to an effective remedy under article 2 (3) of the Covenant. With reference to articles 36 and 271 of the Administrative Responsibility Code, she explains that administrative charges can be imposed no later than two months after the offence is committed and that proceedings should be terminated if, by the time they have commenced, two months have elapsed since the offence was committed. Article 320 (3) of the Code provides that decisions in administrative cases enter into force as soon as the court of cassation hands down its decision. The author argues that two months had elapsed since the events of 6 December 2008 by the time the District Court rejected her appeal on 11 February 2009. Therefore, the administrative proceedings should have been terminated by 6 February 2009. By failing to terminate the proceedings, the domestic courts breached her rights under article 2 (1) and (3) (a) of the Covenant.

3.4 Without referring to specific Covenant provisions, the author outlines a number of procedural violations during the administrative proceedings. She stresses, in particular, that the first-instance court denied her motions to hear witnesses, to study the case file and to be represented by a lawyer; that her motions were not reflected in the court transcript; that international observers and mass media representatives were not allowed to attend the hearing; that police reports supporting the author's guilt were drawn up in the Uzbek language, in which she was not proficient; and that no Russian translation was provided to her. Furthermore, she claims that no court hearing on her appeal was held by the appellate court, while she was once questioned in court as a witness in the administrative case of

another participant. She claims that the court transcript was forged and that she was not allowed to photocopy it. Her motions to hear witnesses who could confirm multiple flaws in the proceedings were denied. She further claims that the hearings before the appellate courts and courts of cassation, as well as the supervisory review hearing on 14 March 2009, were held in her absence, despite her requests to be present, and that she was not duly notified of those hearings, in violation of the law. She claims that articles 320 and 321 of the Administrative Responsibility Code do not provide that cassation and supervisory review hearings can be held in the absence of the person concerned. Lastly, she claims that the proceedings before the Supreme Court were extremely lengthy, as almost four months had elapsed before her application for a supervisory review was considered by the court.

State party's observations on admissibility

4.1 In a note verbale dated 12 September 2012, the State party submitted its observations on admissibility. It submits that the author has failed to exhaust domestic remedies as her appeal was not examined by the Supreme Court, and that she has not brought before the Supreme Court the claims that she raised before the Committee. The Supreme Court has not considered the essence of her claims and has not denied her the right to appeal. Furthermore, the author referred to provisions of domestic law and not to the Covenant before the domestic courts. The legal arguments and factual information submitted by the author are insufficient for the Committee to examine her claims. As to the merits, her arguments relate to the assessment of the facts and evidence and the interpretation of law by the domestic courts; the author has not demonstrated how the assessment made by the domestic courts led to a violation of the Covenant or that it was arbitrary and resulted in a denial of justice. The author expects the Committee to act as a fourth instance and to reassess her claims. Furthermore, the author uses abusive language with regard to the domestic authorities, abusing the right to submission. The State party also submits that the author's allegations with regard to the court proceedings are unsubstantiated.

4.2 In the light of the above, the State party submits that the author's communication should be declared inadmissible as unsubstantiated.

Author's comments on the State party's observations on admissibility

5.1 On 12 October 2012, the author challenged the State party's observations as unsubstantiated. She stresses that she complained to the Supreme Court under the supervisory review proceedings on 13 April and 20 July 2009, invoking the alleged violations of her rights under the Covenant. On 4 August 2009, the Supreme Court rejected her claims. She adds that she prepared her communication in line with the requirements of article 5 (2) of the Optional Protocol and that she is aware that the Committee is not generally in a position to review the evaluation of facts and evidence by the national courts, nor can it review the interpretation of domestic legislation, unless they were arbitrary or amounted to a denial of justice.

5.2 The author adds that she demonstrated that the domestic courts had acted arbitrarily in assessing evidence and interpreting legislation in her case. She stresses that she never called upon the Committee to serve as a fourth instance but exercised her right to submit a communication under articles 1 and 2 of the Optional Protocol. She admits having used emotional, but not abusive, language in her communication and claims that the State party used this argument to prevent the Committee from considering her claim. She recalls that it took the Supreme Court four months to consider her application for a supervisory review. Therefore, lodging another appeal with the Supreme Court would have been extremely time-consuming and could have led to her missing the five-year deadline set by the Committee for introducing an individual communication under rule 96 (c) of its rules of procedure. She submitted her communication in compliance with this rule and, therefore, has not abused her right to submission. She further argues that further appealing the Supreme Court's decision of 4 August 2009 to the President of the Supreme Court would be pointless because, since 2006, the President of the Supreme Court has not taken any decision on individual complaints.

State party's observations on the merits

6.1 On 22 January 2013, the State party submitted its observations on the merits. It notes that the law enforcement authorities have carefully examined the author's communication and that it has based its observations on their assessment. It reiterates its observations on admissibility and argues that the author has not demonstrated how her rights under articles 9, 19 and 21 of the Covenant were breached by the domestic authorities and courts. The State party stresses that domestic law guarantees the rights enshrined in the Covenant for all citizens and provides for judicial and non-judicial remedies. The right to remedy is enshrined in article 44 of the Constitution and in the law on complaints by citizens. In Uzbekistan, citizens are entitled to submit a complaint if there are grounds for such a submission. The author benefited from effective remedies. Her claims were duly examined by the domestic authorities and the courts and rejected as groundless.

6.2 The State party further recalls that the courts found that the author had not been subjected to arbitrary arrest or detention. The courts considered all available evidence, such as the administrative offence record and police reports. This evidence confirmed that the author had participated in an unauthorized gathering in a public place, that she had offended police officers and had not obeyed their orders to stop breaching the law and that, in the presence of an attesting witness, she had refused to sign an administrative offence record or to provide a written explanation. According to article 33 of the Constitution, the domestic authorities have the right to stop or prohibit a gathering only for justified security reasons. This provision complies with article 21 of the Covenant. The author's arguments that the protest had not been stopped or banned and that she had merely participated in that peaceful protest were not confirmed. The domestic courts considered the author's administrative case objectively and thoroughly, established the circumstances of the case and assessed the author's actions based on the available evidence. The penalty was applied after due consideration of aggravating and mitigating circumstances and was proportional to the offence. The Prosecutor General's Office did not find grounds to challenge the court decisions. In the circumstances, the State party concludes that the author's communication should be dismissed as unsubstantiated.

Author's comments on the State party's observations on the merits

7.1 On 15 March 2013, the author submitted her comments on the State party's observations on the merits. She reiterates her complaints in full, claiming that she has presented enough evidence to demonstrate that the domestic courts acted arbitrarily and denied her justice. The fact that her communication was assessed by the State party's law enforcement authorities shows that the assessment lacks independence. The author claims that the decision to ban a gathering should be made by *khokims* (local governors) and not by police officers, and that no such decision was provided by the State party. The fact that the gathering was peaceful is confirmed by online media; this is also reflected in the appeal claims of two others, K. and B., who participated in the gathering. With reference to the evidence of the author's guilt indicated by the State party, she claims that this evidence is limited to a number of reports drawn up by police officers in the Uzbek language. The author claims that no police officers were present at the gathering and that she is not proficient in the Uzbek language. Her requests for Russian translations of the documents were denied and she therefore refused to countersign the records. Furthermore, her motions to hear witnesses in court were rejected. On these grounds, the author refutes the State party's argument that her case was examined fully, objectively and thoroughly.

7.2 The author argues that domestic law does not provide for a procedure to request authorization prior to organizing and conducting a public gathering. In the absence thereof, a commentary to article 201 (1) of the Administrative Responsibility Code is commonly used as a guideline. With reference to the commentary, the author claims that only the organizer of the gathering can be held liable under article 201 (1) of the Code. The investigation did not prove that she had organized the gathering. Therefore, punishing her for not obtaining prior authorization to hold it is unlawful. The author further claims that requiring prior authorization contradicts international law. She refers to the Organization for Security and Cooperation in Europe's Guidelines on Freedom of Peaceful Assembly, which state that, "Anything not expressly forbidden by law should be presumed to be

permissible, and those wishing to assemble should not be required to obtain permission to do so" (p. 35). The author continues that those who participate in a gathering can be held liable under article 201 (1) of the Code only if they breach the procedure for conducting that gathering by: failing to comply with the aims, form and location of the gathering; violating public order; carrying weapons; or failing to comply with lawful orders to stop the gathering. She reiterates that the protest was conducted peacefully in a public place; that the participants did not disturb pedestrians or public transport; that they did not violate public order as, for instance, they did not shout slogans, curse or fight; that they did not carry weapons; and that they ended the picket of their own will, without interference from the authorities. Therefore, the author's arrest by the police violated article 21 of the Covenant.

7.3 The author claims a violation of her rights under article 14 (1) and (5) of the Covenant. In particular, she was found guilty based on statements by police officers; the domestic courts did not act in a competent, independent and impartial manner; the court hearings were closed and international observers were not allowed to attend; and the court review breached domestic law.

7.4 The author argues that by arresting her and finding her guilty of holding a peaceful gathering, the State party also breached articles 18 (1) and 19 (1) and (2) of the Covenant.

7.5 The author reiterates that article 9 (1) was breached in relation to her arrest on 6 December 2008. She also claims that this provision is systematically breached in Uzbekistan. She has been regularly arbitrarily arrested by the police in Tashkent, most recently on 1 March 2013, while she was picketing and requesting a meeting with the Prosecutor General. She was protesting against the criminal behaviour of a police officer towards her daughter. As a result, she was taken to a police station and was held there for four hours. She was released for health reasons. The author claims that, as a general rule, arrest in similar circumstances is not recorded and is disguised as an "invitation to a meeting", and that the people concerned are threatened, blackmailed and verbally offended.

7.6 The author refutes the State party's argument in reference to article 2 (3) of the Covenant that a system of effective remedies exists in Uzbekistan. She argues that the domestic courts lack independence, as the separation of powers does not exist in practice. Even though she is entitled to appeal against the unlawful actions of State officials before the domestic courts, all her complaints were dismissed, which demonstrates that she was deprived of effective remedies. She also claims that her appeals before the prosecutor's office were unsuccessful, which proves the inefficiency of this remedy. Lastly, she notes that the State party has acknowledged that she used domestic remedies, which was disputed in the State party's observations on admissibility.

State party's additional observations

8.1 On 8 July 2013, the State party submitted additional observations on the merits, refuting the author's claims as unsubstantiated. It reiterates that the author was found guilty under the provisions of the Administrative Responsibility Code of having participated in an unauthorized picket. Her guilt was established, inter alia, based on witness statements, police reports, the administrative offence record and the testimonials of other protesters who were also found guilty. The District Court examined her case in compliance with the requirements of articles 305–311 of the Code. Her rights in the process were explained to her as provided for under article 294 of the Code, including her right to a lawyer. The State party adds that the author's claims were examined by the interdisciplinary working group on human rights, chaired by the Minister of Justice.

8.2 The State party recalls that, pursuant to article 33 of the Constitution, domestic authorities have the right to stop or prohibit a gathering only for justified security reasons. According to article 25 of the law on local State authorities, regional, district or city *khokims* take measures aiming to preserve public order, fight crime, ensure the security of citizens and protect their rights and health, and counter natural disasters, epidemics and other extreme situations. On the other hand, police officers, within their competence, ensure the protection of the rights and legal interests of citizens and public order and safety, and fight crime. The above provisions comply with the requirements of article 21 of the Covenant.

8.3 The State party refutes as unsubstantiated the author's argument that the picket was not banned or stopped, and that she merely participated in the gathering, which lasted 30 minutes and was peaceful in nature. It argues that the author's argument is inconsistent with reality and that she aims to disorient the Committee.

8.4 Regarding the author's complaint under article 14 of the Covenant, the State party refers to article 273 of the Administrative Responsibility Code, stressing that administrative proceedings can be conducted in Uzbek, Karakalpak or a majority language of a territory. Parties to the proceedings who are not proficient in the language of the proceedings are entitled to familiarize themselves with the case materials, to participate in the proceedings with the assistance of an interpreter and to address the court in their mother tongue. The author did not request the assistance of an interpreter when the administrative offence record was drawn up or when her case was examined in court.

8.5 The State party submits that the author's claims were duly assessed and found to be unsubstantiated, as supported by evidence in her administrative case. The court decisions are well substantiated and there are no grounds to annul or amend them.

8.6 The State party further notes that the author's arguments lack consistency. For instance, she claims a violation of article 14 of the Covenant while acknowledging that she was found guilty of an administrative offence by a court and exercised her right to appeal the sentence before higher courts. She also claims that she was subjected to arbitrary arrest on several occasions, without providing any proof. She also refers to legal provisions that are no longer valid.

8.7 The State party concludes that the author has provided no new facts or evidence to demonstrate that she did not commit the administrative offence, and that she is speculating about the role and place of the judiciary and the executive in Uzbekistan.

Author's additional comments on the State party's observations

9.1 On 12 August 2013, the author challenged the State party's submissions that she was speculating about the role of the judiciary and the executive in Uzbekistan; that she was distorting reality and aiming to disorient the Committee; and that her claims about arbitrary arrest on several occasions were unsubstantiated. She adds that she was subjected to arbitrary arrest on 13 May 2012, after she and another human rights defender laid flowers on the Monument to Courage in Tashkent in commemoration of the Andijan events of 13 May 2005. They were arrested by the head of the anti-banditry and counter-terrorism department of the Mirzo-Ulugbek District Police, M. Their arrest was not recorded and lasted around 10 hours, during which they were not allowed to eat or go to the toilet. The author submitted a claim to challenge unlawful actions of M. before the District Court. On 24 May 2013, the court rejected her claim. According to the court decision, the complaint was rejected on procedural grounds because the author had refused to pay a court fee without providing explanations of her financial situation. She was given 10 days to do so.

9.2 The author requested to be exempted from paying the court fee because her only source of income was a retirement pension. On 14 June 2013, the court found her explanation insufficient as she had failed to provide certificates to demonstrate that her financial situation was difficult. Therefore, the court refused to consider her complaint. On 10 June 2016, the author appealed the decision of 24 May 2013, claiming that, pursuant to article 10 of the law on court appeals against actions and decisions violating the rights and freedoms of citizens, a court fee could be imposed on her only if the court dismissed her claim on substantial grounds. She also requested that her case be transmitted to another judge for examination. On 17 June 2013, the President of the District Court refused to consider her claim on similar grounds. On 24 June 2013, the author appealed the court decisions of 24 May and 14 June 2013 before the Tashkent City Court. She claimed that her complaint had been rejected despite the fact that she had complied with the request to submit proof of her retirement pension on 10 June 2010.[3] She also requested that the competent authorities remove the judge from office.

[3] The outcome of this proceeding is unclear.

9.3 The author claims that by refusing to examine her complaint about the unlawful actions of M., the domestic courts denied her justice. She reiterates that she has sufficiently substantiated her remaining complaints before the Committee.

9.4 On 24 February 2015, the author submitted new allegations under articles 2, 9, 14 and 19 of the Covenant. On 8 May 2014, the author and her friend B. held a picket in front of the Ukrainian Embassy in Tashkent to express their indignation about repression in the eastern part of Ukraine. The author asked the security officers to arrange a meeting with the communications unit of the embassy and to transmit a banner with the inscription "Kiev junta to trial" to the ambassador. Shortly thereafter, a certain D. snatched the banner from the author, threatening to take her to a police station should she refuse to leave. The author and B. went to a prosecutor's office to complain about D.'s actions. While waiting to be received, they saw around 20 police officers entering the building, including a certain E. The latter started cursing and publicly insulted the author, saying that she had no business in Uzbekistan and should get out of the country. The author went home. Several hours later, she was arrested and taken to a district police station, where an administrative offence record under article 201 (1) of the Administrative Responsibility Code was drawn up against her. A court hearing was held in the evening. E. rushed into the courtroom and shouted that the sentence was a warning to the author and that she should "quit poking her nose in others' business".

9.5 On 8 May 2014, the District Court, in a single judge formation, found the author guilty and fined her 60 times the minimum wage, the equivalent of her retirement pension for two and a half years. On 26 May 2014, the Tashkent City Court upheld the decision on appeal. On 12 January 2015, the Supreme Court reduced the penalty to three times the minimum wage. The author considers that the judge was influenced by E.'s threats and fabricated the sentence against her. Furthermore, she submits that, by finding that she had waved the banner in front of the Prosecutor General's Office, the judge erred in the assessment of the facts as she had earlier transmitted the banner to the Ukrainian ambassador through D. The author claims that several witnesses could confirm that, but that her motions to hear them were denied. She further challenges the charges under article 201 of the Administrative Responsibility Code. She explains that this provision applies to violations of the procedure for organizing and conducting assemblies, rallies, marches and demonstrations, while she held a picket, which is not a mass event and thus falls out of the scope of this provision.

9.6 The author also claims that she was denied justice, in violation of article 2 (3) of the Covenant, because the domestic courts rejected, on formalistic grounds, her complaints about the unlawful actions of E. that had breached her rights and offended her human dignity. On 19 January 2015, the District Court refused to consider her claim because she had failed to pay a court fee and provide evidence in support of her claims. Concerning the court fee, the author refers to Decision No. 140 of the Cabinet of Ministers of 3 November 1994, which states that in the event of a complaint about the unlawful actions of State officials, a court fee is imposed on those found guilty on the delivery of the court decision. She also refers to article 10 of the law on court appeals against actions and decisions violating the rights and freedoms of citizens, which provides that a court fee can be imposed on citizens only if their claims are rejected and that it is otherwise payable by the officials against whom the claim is directed. Concerning the availability of evidence, the author submits that she provided copies of complaints filed by her friend B., who had witnessed the events and committed to testify in court. The author claims that a number of State officials witnessed the events, but would refuse to testify. Furthermore, she motioned the court to secure evidence on 2 February 2015, in accordance with article 61 (1) of the Code of Civil Procedure, which provides that those who believe that the provision of evidence would be difficult or problematic can motion the court, before or after submitting the claim, to secure that evidence. However, on 9 February 2015, the District Court refused to consider her complaint and disregarded her motion. Therefore, she submits that the court failed to take measures to clarify the circumstances of her claim, in violation of article 15 of the Code of Civil Procedure. The author appealed the decision before the City Court and challenged the judge before the competent authorities.

9.7 The author also claims a violation of articles 2 (2) and 12 of the Covenant in relation to legal provisions requiring citizens to apply for authorization to leave the country every two years and to pay a fee amounting to half the minimum wage. She has unsuccessfully complained to several authorities in this connection.

State party's further observations

10.1 On 15 May 2015, the State party concisely addressed the author's new allegations regarding the events of 8 May 2014. It submits that the domestic courts considered the case fully and thoroughly, established its circumstances in accordance with the requirements of domestic law and assessed the admissibility of the evidence. It asserts that the author's guilt is supported by the administrative offence record, a report, explanations and other evidence. Therefore, there are no grounds to review the court decisions concerned.

10.2 On 16 October 2015, the State party reiterated its previous submissions regarding the events of 8 May 2014.

Author's comments on the State party's further observations

11. On 30 July 2015, the author provided further comments. She reiterates her claims in relation to the proceedings concerning the picket of 8 May 2014 and adds that, despite her motions, her friend B., who had witnessed the events, was never invited to testify in court. The author provides B.'s testimonial and adds that a notary refused to certify B.'s signature for political reasons. After the rejection of her complaint against the notary's refusal by an official of the Ministry of Justice, the author found that domestic remedies would be ineffective and decided not to appeal further. The author challenges the State party's assertion that the court decisions are lawful and substantiated. She claims that the trial record of 8 May 2014 contradicts the State party's argument that the domestic courts considered her case fully and thoroughly. She underlines that the trial record referred to her as "the offender."

Issues and proceedings before the Committee

Consideration of admissibility

12.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

12.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

12.3 With regard to the requirement set out in article 5 (2) (b) of the Optional Protocol, the Committee notes the State party's challenge to the admissibility of the communication in relation to the protest of 6 December 2008 on the grounds of the non-exhaustion of domestic remedies, because the author's claim was not examined by the Supreme Court and she failed to raise before the Supreme Court the claims that she raised before the Committee. The Committee notes the author's submission, supported by documentation, that she filed two applications for a supervisory review with the Supreme Court claiming a violation of her Covenant rights, which were both rejected. It also notes her claim that the supervisory review procedure with the Supreme Court was time-consuming and that lodging another application could have compromised her communication with the Committee because she would have missed the five-year period stipulated under rule 96 (c) of its rules of procedure. It also notes the author's argument, which remains unrefuted by the State party, that appealing the Supreme Court's rejection before the President of the Supreme Court would be ineffective because the latter has not taken any decision on individual complaints since 2006.

12.4 The Committee recalls that filing a request for the supervisory review of court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the

circumstances of the case.[4] The Committee notes that, in the present case, the State party has not shown whether, and in how many cases, an application for supervisory review before the Supreme Court or the President of the Supreme Court has been successful, specifically in cases concerning the rights to freedom of expression and assembly. Therefore, the Committee considers that the State party has not demonstrated that there was a reasonable prospect that an appeal to the Supreme Court or its President via the supervisory review procedure would provide effective relief in the author's case. In the circumstances, the Committee finds that the provisions of article 5 (2) (b) of the Optional Protocol do not preclude it from considering the present communication.

12.5 The Committee notes the author's claim that the legal provisions requiring Uzbek citizens to apply for authorization to leave the country breach articles 2 (2) and 12 of the Covenant. It also notes her claim that article 18 (1) of the Covenant was violated in her case because she was found guilty of holding a peaceful gathering. In the absence of any further pertinent information from the author in this connection, the Committee, however, considers that these claims are insufficiently substantiated for the purposes of admissibility, and are therefore inadmissible under article 2 of the Optional Protocol.

12.6 The Committee notes the author's claim under article 14 that fair trial guarantees were breached throughout the administrative proceedings, and in particular that her motions to hear witnesses on her behalf, to acquaint herself with the content of the case file and to be represented by a lawyer were denied; that the trial transcript was inaccurate; that international observers and mass media representatives were not allowed to attend the hearing; that no Russian translation of the police reports was provided to her; and that several court hearings were held in her absence. The Committee notes, however, that the author has provided no specific arguments in substantiation of her claim. In the absence of any further information in this connection, the Committee considers that this part of the communication is insufficiently substantiated for the purposes of admissibility, and therefore inadmissible under article 2 of the Optional Protocol.

12.7 The Committee further takes note of the State party's submission that the author abused the right of submission by using abusive language in her communication. It notes the author's argument that her communication was presented in emotional but not abusive terms and that she has complied with all the requirements for submitting a communication with the Committee. In these circumstances, and taking into account the case file content, the Committee considers that it is not precluded by article 3 of the Optional Protocol from considering the present communication.

12.8 The Committee notes the author's submission that the State party has violated its obligations under article 2 (1) and (2) of the Covenant as it failed to protect her rights under articles 19 and 21 of the Covenant, to take measures to give effect to these rights and to provide her with an effective remedy. The Committee notes that the author claims a violation of her rights under articles 19 and 21 of the Covenant, read alone. The Committee also recalls its jurisprudence to the effect that the provisions of article 2 of the Covenant lay down general obligations for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[5] The Committee thus considers that the author's claims under article 2 (1) and (2) of the Covenant are inadmissible under article 2 of the Optional Protocol.

12.9 The Committee considers that the author has sufficiently substantiated her claims under articles 9 (1), 19 and 21, in conjunction with article 2 (3), of the Covenant, for the purposes of admissibility and proceeds with its consideration of the merits.

---

[4] See *Melnikov v. Belarus* (CCPR/C/120/D/2147/2012), para. 7.3; *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3, *Protsko and Tolchin v. Belarus* (CCPR/C/CCPR/C/109/D/1919-1920/2009), para. 6.5; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *P.L. v. Belarus* (CCPR/C/102/D/1814/2008), para. 6.2.

[5] See, for example, *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; and *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5.

Consideration of the merits

13.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

13.2 The Committee notes the author's claim that her rights under articles 19 and 21 of the Covenant were violated, as she was arrested, found guilty under article 201 (1) of the Administrative Responsibility Code and fined for participating in peaceful protests on 6 December 2008 and 8 May 2014. The Committee notes that the second protest involved two participants only, including the author. It also notes that the author was found guilty of failing to comply with the procedure for organizing and holding mass events, including by participating in an event organized without prior authorization from the local authorities. The Committee considers that the State party's authorities imposed limitations on the author's rights to freedom of expression and freedom of assembly, which are protected under articles 19 (2) and 21 of the Covenant. Therefore, the Committee must verify whether these restrictions can be justified under article 19 (3) and the second sentence of article 21 of the Covenant.

13.3 The Committee refers to paragraph 2 of its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society, and constitute the foundation stone for every free and democratic society. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary (a) for respect of the rights and reputations of others and (b) for the protection of national security or of public order (*ordre public*) or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[6] The Committee also recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.[7] Finally, the Committee recalls that any restriction on the freedom of expression must not be overbroad in nature, that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest whose protection is sought.[8]

13.4 The Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and no restriction to this right is permissible unless if it is (a) imposed in conformity with the law; and (b) necessary in a democratic society, in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.[9]

13.5 In the present case, the Committee notes the author's claim that the restrictions imposed on her were not provided for by law as: (a) there is no formal procedure for

[6] See the Committee's general comment No. 34, para. 22. See also, inter alia, *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010), para. 7.7; *Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.3; and *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 8.3.

[7] See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3; and *Poplavny and Sudalenko v. Belarus*, para. 8.3.

[8] See the Committee's general comment No. 34, para. 34.

[9] See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4; and *Poplavny and Sudalenko v. Belarus*, para. 8.5.

organizing and conducting mass events, including for requesting prior authorization, in Uzbekistan; and (b) while article 201 (1) of the Administrative Responsibility Code relates to the organization of mass events, it has not been established that the author organized the first protest and, therefore, punishing her for not obtaining prior authorization is unlawful. It also notes her claim that the requirement to obtain prior authorization is contrary to articles 19 and 21 of the Covenant. It further notes the author's claim that article 201 (1) of the Administrative Responsibility Code is not applicable to her protest held in 2014, which was not a mass event but a picket with only two participants.

13.6 The Committee further notes the author's explanation that the protest held in 2008 was peaceful and that she provided evidence in support of her claim. It also notes her submission that the protest did not violate public order or disrupt transport or pedestrian traffic, and that the participants did not shout, curse, fight or carry weapons and were not asked to stop protesting. It notes the author's submission that the police were not even present at the first gathering, that the participants dispersed voluntarily and that they were arrested by police in different locations later during the day in connection with their participation in the protest. The Committee also notes the author's explanation that the protest held in 2014 was not a mass event, but a picket conducted by two persons. The Committee notes that the State party denies the author's claims as unsubstantiated with regard to both protests, referring to the court decisions that found her guilty based on an objective and thorough review of available evidence. With regard to the first protest, the Committee also notes the State party's submission that the author has failed to demonstrate that the protest was peaceful, lasted 30 minutes and was not banned or stopped. It also notes the State party's submission that the penalty imposed on the author was proportional to the offence. The Committee also takes note of the State party's reference to article 33 of the Constitution, which provides that the domestic authorities have the right to stop or prohibit a gathering only for justified security reasons, which complies with article 21 of the Covenant, according to the State party.

13.7 Regarding the author's claim under article 21 of the Covenant, regardless of whether her conduct was prohibited by domestic law, the Committee observes that the State party has not demonstrated why obtaining prior formal authorization from the local authorities before conducting the protests was necessary for the protection of national security or public safety, public order, public health or morals, or for the respect of the rights and freedom of others, as set out in article 21 of the Covenant, specifically with regard to the second protest, which involved two participants only. The Committee similarly considers that the State party has failed to demonstrate that the restrictions imposed on the author's rights, namely her arrest and the imposition on her of a significant fine, were necessary on the grounds specified in article 21 of the Covenant. Accordingly, the Committee concludes that the facts before it resulted also in a violation of the author's rights under article 21 of the Covenant.[10]

13.8 With regard to the author's claim under article 19 of the Covenant, the Committee observes that neither the State party nor the domestic courts have invoked any specific grounds, such as national security, public order, public health, public morals or respect of the rights of others, as required under article 19 (3), to support the necessity of the restrictions imposed on the author's freedom of expression.[11] Neither has the State party demonstrated that the measures chosen — arresting the author, finding her guilty and imposing a fine of several monthly wages, despite the fact that her only income was a retirement pension, for simply protesting and expressing her views — were the least intrusive in nature or proportionate to the interest it sought to protect.[12] The Committee considers that, in the circumstances of the case, the limitations imposed on the author were not shown to be justified by a legitimate aim or necessary and proportional to such an aim pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 (2) of the Covenant have been violated.

---

[10] See *Sviridov v. Kazakhstan* (CCPR/C/120/D/2158/2012), para. 10.4.

[11] See *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

[12] See *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.5; and *Sviridov v. Kazakhstan*, para. 10.4.

13.9 The Committee finally notes the author's claim under article 9 (1) of the Covenant that her arrest as a result of her participation in peaceful protests on 6 December 2008, 13 May 2012 and 8 May 2014 was unlawful and arbitrary. It notes the author's reference to the provisions of the Administrative Responsibility Code according to which administrative arrest is only permitted with a view to preventing crime and when a person cannot be identified. It notes the author's argument that, given that she was protesting peacefully together with other participants and was carrying identity documents, there were no legal grounds for her arrest. It also notes her claim that there is no official record of her arrests on those dates, even though she was held in the police station for up to 10 hours on each occasion. The Committee also notes that the State party has rejected the author's claim as unsubstantiated.

13.10 The Committee recalls that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion and expression and freedom of assembly, is arbitrary.[13] In the light of the Committee's findings as to the violation of the author's rights under articles 19 and 21, and in the absence of an explanation by the State party as to the necessity of the author's arrests in the circumstances of exercising her rights under the Covenant, the Committee also finds that the deprivation of liberty to which the author was subjected was arbitrary. Accordingly, the Committee considers that the above facts reveal a violation of the author's rights under article 9 (1) of the Covenant.

13.11 In the light of these conclusions, the Committee will not consider the author's claim under article 2 (3) of the Covenant separately.

14. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclosed a violation by the State party of articles 9 (1), 19 (2) and 21 of the Covenant.

15. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the author with adequate compensation and appropriate measures of satisfaction, including reimbursement for any legal costs or other fees, as well as non-pecuniary losses, incurred by her. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

16. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

[13] See the Committee's general comment No. 35 (2014) on liberty and security of person, para. 17.